

Deposition Designations for:

PETER VAN N. LOCKWOOD
May 4, 2009

Deposition Designation Key

CI = Certain insurers (green)

**CNA = Continental Cas. Co &
Continental Ins. Co. (red)**

PP's = Plan Proponents (blue)

Obj: = Objection

Ctr = Counter Designation

R = Relevance

BE = Best Evidence

F = Foundation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: : Chapter 11
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
: (Jointly
Debtors : Administered)

Monday, May 4, 2009

Continuation of oral

deposition of PETER VAN N. LOCKWOOD,
ESQUIRE, taken pursuant to notice, was
held at the offices of CAPLIN & DRYSDALE,
One Thomas Circle N.W., Suite 1100,
Washington, DC 20005, commencing at
12:05 p.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street
8th Floor
Philadelphia, Pennsylvania 19103

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| Page 502 | Page 504 |
|--|---|
| <p>1 seeking disproportionate shares of 2 insurance through direct actions or 3 otherwise, the injunction was crafted in, 4 I might add, many earlier cases than this 5 one, perhaps not in precisely the same 6 language, but the concept has been around 7 for a while, to protect the Trust and its 8 beneficiaries from having people do what 9 I would call jumping the queue in getting 10 disproportionate or attempting to get 11 disproportionate shares of insurance that 12 should be shared by all. 13 MR. COHN: Let's go off the 14 record for a second. 15 (There was a discussion held 16 off the record at this time.) 17 BY MR. COHN: 18 Q. Directing your attention to 19 what has been marked ACC 30(b)(6) 20 Exhibit-4. 21 A. Yes. 22 Q. Namely, the Asbestos 23 Insurance Transfer Agreement? 24 A. Yes.</p> | <p>1 Injunction. 2 Q. So the Asbestos PI Trust 3 will not end up holding -- strike that. 4 Would the committee agree 5 that the Asbestos PI Trust will not end 6 up holding claims of individual asbestos 7 PI claimants against insurers for their 8 own misconduct? 9 MS. BAIER: Objection to 10 form. 11 MR. SCHIAVONI: Objection to 12 form, and, in addition, I would 13 say that the question calls for 14 the waiver of privilege. And I 15 would also ask Mr. Cohn that you 16 identify the topic of on your 17 30(b)(6) notice that this is 18 responsive to. 19 MS. BAIER: I would also 20 object to form, especially to the 21 word "holding." 22 I think it mischaracterizes 23 what the testimony has been and 24 confuses the issue by asking what</p> |
| Page 503 | Page 505 |
| <p>1 Q. Which is Exhibit-6 to the 2 Plan Exhibit Book. 3 A. Yes. 4 Q. Does that agreement assign 5 to the Asbestos PI Trust the claims of 6 individual asbestos PI claimants against 7 insurers for their own misconduct? 8 MR. FINCH: Object to form. 9 MR. SCHIAVONI: Objection to 10 form. 11 THE WITNESS: I don't 12 believe this agreement assigns 13 claims to the Trust at all. This 14 agreement assigns insurance 15 rights, according to my 16 understanding of the agreement. 17 How claims wind up in the Trust is 18 by the Asbestos Permanent 19 Channelling Injunction. 20 BY MR. COHN: 21 Q. So -- 22 A. And the Asbestos Insurance 23 Injunction indirectly, perhaps. But 24 primarily Asbestos Permanent Channelling</p> | <p>1 the Trust holds. I don't think 2 the Trust holds things. 3 MR. FINCH: I object to 4 form. I disagree that it calls 5 for privileged information. 6 MR. COHN: With that, would 7 the witness do his best. 8 THE WITNESS: The Trust 9 certainly isn't going to hold any 10 claims. It's going to have claims 11 asserted against it. The people 12 that hold the claims are the 13 claimants. 14 With respect to this, the 15 question about whether claims 16 involving the, quote, I think you 17 phrased it, independent tort 18 liability of insurers, close 19 quote, the problem I have 20 answering that question is that it 21 attempts to summarize in a single 22 phrase, which does not necessarily 23 have a precise legal meaning, a 24 complicated set of questions</p> |

PP's
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1 having to do with how the Asbestos
2 Permanent Channelling Injunction
3 works.

4 The provisions in the
5 Asbestos Permanent Channelling
6 Injunction are very complex. As a
7 general proposition, however, I
8 would say that the claims that are
9 being channelled to the Asbestos
10 Personal Injury Trust are claims
11 that are against the Debtors or
12 against various other entities
13 defined as asbestos-protected
14 parties that arise in the manner
15 that satisfies the requirements of
16 Section 524(g), which has very
17 specific language about what can
18 and cannot be channelled to an
19 Asbestos Personal Injury Trust
20 under that section.

21 What you are, in effect,
22 trying to ask is does the phrase
23 you have used fit within or
24 without the terminology of Section

1 committee member.

2 MR. COHN: It's covered by
3 several of the topics, and I would
4 really like to just go on.

5 BY MR. COHN:

6 **Q. So the question is, will**
7 **claims of individual asbestos PI**
8 **claimants against insurers for their own**
9 **misconduct be an asset of the Asbestos PI**
10 **Trust?**

11 MS. BAIER: Objection.

12 MR. FINCH: Objection to
13 form.

14 MR. SCHIAVONI: I would
15 object, asked and answered.

16 And I would remind
17 Mr. Lockwood he has addressed this
18 issue in other cases like
19 Pittsburgh Corning and to the
20 extent you need to go any further
21 here, I think it raises a whole
22 host of issues about waiver.

23 MS. DeCRISTOFARO: Note my
24 objection, too.

1 524(g) where the term as such is
2 not used. So I can't really
3 answer the question yes or no as
4 stated.

5 All I can tell you is that
6 the Asbestos Permanent Channelling
7 Injunction, in my understanding,
8 is not intended to channel to the
9 Trust claims that Section 524(g)
10 does not authorize to be
11 channelled to the Trust.

12 BY MR. COHN:

13 **Q. All right. We have gone a**
14 **little afield from the question, so if I**
15 **can go back and ask what I meant to, and**
16 **let's try it again.**

17 MR. SCHIAVONI: Again,
18 Mr. Cohn, we would ask you to
19 identify in the notice where it is
20 you identify this as a topic,
21 because to the extent Mr. Lockwood
22 is not designated by the committee
23 on it, it's not really a proper
24 question to pose to him by another

1 THE WITNESS: Would you read
2 back the question, please?

3 (The reporter read from the
4 record as requested.)

5 MS. DeCRISTOFARO:
6 Objection.

7 MR. FINCH: Objection.

8 THE WITNESS: As phrased,
9 the answer to that question is
10 unequivocally no.

11 MR. COHN: Thank you.

12 BY MR. COHN:

13 **Q. Now, directing your**
14 **attention to the Asbestos Insurance**
15 **Entity Injunction, if an asbestos PI**
16 **claimant has a claim against an insurer**
17 **based on the insurer's own alleged**
18 **misconduct, does the Asbestos Insurance**
19 **Entity Injunction bar him from asserting**
20 **that claim?**

21 MR. FINCH: Objection.

22 MR. SCHIAVONI: Objection,
23 calls for a legal conclusion and
24 objection to form and the other

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|---|--|
| <p>1 extent that the proceeds of those 2 settlements wind up in the Grace Trust as 3 opposed to the Grace Estate for 4 distribution to other people, they are a 5 settlement part of Grace's contribution 6 to the Trust. 7 Q. Has the ACC attempted to 8 apportion or value those portions of the 9 contributions made by Grace that are upon 10 Grace's behalf versus upon the insurer's 11 behalf? 12 MR. FINCH: You can answer 13 that yes or no. 14 THE WITNESS: Well, I will 15 answer it no and add I am not sure 16 how anybody could go about doing 17 that. It's what is known as a 18 lump sum deal. 19 MS. CASEY: I have no 20 further questions. 21 MR. SCHIAVONI: Actually, 22 could we let Mr. Speights from 23 South Carolina go first. 24 MR. FINCH: You are up, Dan.</p> | <p>1 MR. FINCH: Objection, 2 foundation. 3 BY MR. SPEIGHTS: 4 Q. Yes, you personally. 5 A. No. 6 Q. Was your law firm? 7 MR. FINCH: Objection, form, 8 foundation, relevance. 9 THE WITNESS: It depends on 10 how you define negotiations when 11 it comes to dealing with a 12 congressional enactment. My 13 partner, Mr. Inselbuch, to my 14 knowledge, had at least one 15 meeting with Senator Heflin on the 16 subject of the statute. 17 What other discussions, 18 either in committee or outside 19 committee or whatever, 20 Mr. Inselbuch might have been 21 involved with, I really don't 22 know. But he's being deposed on 23 June 12th, and I guess you could 24 ask him.</p> |
| Page 563 | Page 565 |
| <p>1 - - - 2 EXAMINATION 3 - - - 4 BY MR. SPEIGHTS: 5 Q. Mr. Lockwood, were you 6 involved in the negotiation of the 524 -- 7 strike that. 8 Were you involved in the -- 9 MS. BAIER: Dan, can you 10 speak up or come closer to the 11 phone or something? 12 THE WITNESS: Nobody can 13 hear you. 14 MR. SPEIGHTS: I picked up 15 the phone. I am not on speaker. 16 MR. FINCH: Now we can hear 17 you. 18 THE WITNESS: That's better. 19 MR. FINCH: That's better. 20 BY MR. SPEIGHTS: 21 Q. Let me start over again. 22 Mr. Lockwood, were you involved in the 23 negotiation of the 524(g) statute? 24 A. Me personally?</p> | <p>1 BY MR. SPEIGHTS: 2 Q. Would you agree with me that 3 the 524(g) statute always refers to the 4 word "Trust" in singular rather than 5 plural? 6 A. I would have to go back and 7 look at the statute to be sure of that. 8 If you tell me it does, I am not going to 9 argue with you about it. 10 Q. Well, I am actually not 11 going to tell you anything. But if you 12 don't recall without looking at the 13 statute, I certainly would accept that 14 answer. 15 A. I do not specifically recall 16 without looking at the statute. 17 Q. Do you recall any bankruptcy 18 that was contested and provides for two 19 asbestos trusts, two or more asbestos 20 trusts? 21 A. Do you mean a bankruptcy 22 where the Plan proposed to create two 23 trusts, and somebody said there could 24 only be one and that was the contest and</p> |

PP's
obj:
R,
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PP's
Obj: R, BE

the court ruled on that?

Q. I will accept that.

A. I don't think I do recall any such bankruptcy.

Q. How many bankruptcies do you recall where there had been separate trusts of property damage and personal injury?

A. As I sit here right now, I can't think of one. I believe there have been some, but I am hard-pressed to identify one from memory. This was not a topic I was prepared to deal with:

My recollection, however, is there were a number of bankruptcies in which there was no property damage trust at all, whether separate or as part of a single trust to which PI trusts were also channelled.

Q. Mr. Lockwood, what was the status of the PI estimation proceedings when the ACC agreed, at least in principle, with the Debtors to resolve this bankruptcy?

claimants, both present and future, whenever it ended its presentation of the estimation?

MS. BAIER: Objection as to form.

MR. FINCH: Object to form.

THE WITNESS: My recollection is that Grace had various numbers on the table from various witnesses, but they were all way too low.

BY MR. SPEIGHTS:

Q. Well, what is your recollection of the last number they were using before you settled?

MS. BAIER: Objection as to form.

MR. FINCH: Object form and lack of -- well, maybe not lack of foundation but lack of recall.

THE WITNESS: When you say "they were using," using in what context?

BY MR. SPEIGHTS:

A. There are others that are probably better equipped to be precise about that than I, but my general recollection was that I believe that Grace had basically completed putting on its case. And it was before the PI and FCR were putting on their case.

But I really was not -- unlike Mr. Finch, who is sitting here next to me, who actually was involved in trying that case, I wasn't. So I could be wrong about that.

Q. Well, maybe you could represent Mr. Finch, and I could question him.

Regardless -- and by the way --

A. Suffice it to say, there had been a lot of witnesses put on by Grace at the time the case was over -- excuse me -- was postponed.

Q. What was your understanding of Grace's position of the total amount that should be paid to asbestos PI

Q. Well, what is your understanding of Grace's last position of the total amount that should be paid to asbestos present and future PI claimants before the deal was negotiated with the ACC?

MS. BAIER: Objection to form.

MR. FINCH: Mr. Speights, are you asking for his recollection of what is the estimate of the total present and future liability for asbestos PI claims put forward through the testimony of Tom Florence in his expert report and testimony that occurred on March 31st, 2008, two days before the company rested its case?

MR. SPEIGHTS: Well, that wasn't my question, but I will ask that. If Mr. Lockwood knows the answer to that, maybe that will suffice.

1 nature of the general objection?

2 MR. FREEDMAN: The nature of
3 the general objection is that they
4 are presenting hypotheticals,
5 which the witness can't answer
6 and, as a result, require him to
7 set forth opinions about things
8 that are beyond what he should be
9 testifying to in the 30(b)(6)
10 deposition.

11 MR. SCHIAVONI: That's been
12 90 percent of the testimony,
13 hypotheticals.

14 MR. FREEDMAN: Well, I am
15 stating this objection to this
16 line of questions. You have done
17 well on everything else.

18 BY MR. SPEIGHTS:

19 **Q. Mr. Lockwood, I am going to**
20 **try to wind up in less than ten minutes.**

21 MR. FINCH: Mr. Speights,
22 before you wind up, can we take a
23 two-minute break?

24 MR. SPEIGHTS: That will be

1 fine, if it's two minutes.

2 MR. FINCH: It's two
3 minutes. Off the record.

4 (There was a break from 3:17
5 p.m. to 3:20.)

6 BY MR. SPEIGHTS:

7 **Q. Mr. Lockwood, has trustees**
8 **been selected for the PI Trust?**

9 A. Yes.

10 **Q. Have they been revealed?**

11 A. Their names are set forth at
12 the end of the PI Trust Agreement. The
13 second-to-last page is a signature page
14 which names three individuals, Harry
15 Huge, Lewis Sifford, and Dean Trafelet,
16 as the three prospective trustees.

17 **Q. Did the ACC choose these**
18 **three people?**

19 A. The ACC and the FCR
20 consulted each other on these three
21 prospective individuals and then proposed
22 them to the co-proponents and the
23 co-proponents accepted them.

24 **Q. Had the ACC or the FCR**

1 **proposed any other person to the**
2 **co-proponent which they did not accept?**

3 A. Not that I recall.

4 **Q. Has the ACC chosen an entity**
5 **to administer the Trust?**

6 A. Not to my knowledge.

7 Indeed, I don't believe the ACC is
8 capable of making that choice. I believe
9 under the Trust Agreement, the trustees
10 are the only parties with the authority
11 to make that decision.

12 **Q. Is statute of limitations a**
13 **legal defense in the Trust Distribution**
14 **Procedures?**

15 A. To the extent --

16 **Q. To any claim?**

17 A. Yes, to the extent so
18 provided in the TDPs. What I mean by
19 that is there are one or more provisions
20 that address that subject in which the
21 statute of limitations is made
22 applicable.

23 **Q. And if I sit down tonight**
24 **and very carefully review again this**

1 **Trust Distribution Procedure for the**
2 **Grace PI Trust, I will find statute of**
3 **limitations somewhere?**

4 A. Somewhere in there, it is my
5 best recollection that there is a
6 provision, one or more provisions, that
7 address statute of limitations.

8 I might be able to find it,
9 if you really wanted me to root around in
10 it for a while here. I can't from memory
11 remember exactly where it shows up, but I
12 am --

13 **Q. Well, I actually don't want**
14 **you to do that.**

15 A. Okay.

16 **Q. But I would request you or**
17 **your attorney --**

18 A. Okay. It's Section
19 5.1(a)(2) of the TDP is at least one
20 place. It's captioned Effect of Statutes
21 of Limitation and Repose. It starts at
22 page 16 of the TDP and extends over to
23 page 17. There may be possibly other
24 places where statute of limitations

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1 the same position and give the
2 same instruction.

3 If you ask about questions
4 that Libby claimants have taken in
5 papers filed in the court, for
6 example, in a Disclosure Statement
7 objections and the bullet point
8 Plan objections and the
9 committee's responses made to that
10 in open court, I will permit
11 Mr. Lockwood certainly to answer
12 those questions.

13 But anything that gets into
14 communications with between the
15 Libby claimants with the rest of
16 the ACC or counsel for the ACC
17 about their respective views of
18 insurance coverage, I am going to
19 take the position as privileged.

20 And so I think you have to
21 do it on a question-by-question
22 basis, but that's my general
23 position.

24 BY MR. SCHIAVONI:

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1 **Q. Okay. Mr. Lockwood, I just**
2 **have one other brief topic. And here is**
3 **the first question on that: Does the**
4 **Plan purport to release claims that may**
5 **exist between insurers and Non-Debtors?**

6 MR. FINCH: Objection, form,
7 broad, vague.

8 THE WITNESS: Phrased as
9 broadly as you have, I think the
10 answer is yes.

11 MR. SCHIAVONI: Okay. Thank
12 you. I have no further questions.

13 MR. FINCH: Is there anyone
14 else in the room who has
15 questions?

16 MR. BROWN: I have some
17 follow-ups.

18 MR. FINCH: Is there anyone
19 else on the telephone who has not
20 asked questions yet who has
21 questions?

22 (No response.)

23 MR. FINCH: Hearing no
24 affirmative response, I will let

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1 you have follow-up until we run
2 out of time.

3 (There was a discussion held
4 off the record at this time.)

5 (There was a break from 3:55
6 p.m. to 4:03 p.m.)

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. BROWN:

11 **Q. Mr. Lockwood, just a couple**
12 **of follow-ups. The court reporter is**
13 **actually going to read back a question**
14 **and answer. I think it's probably easier**
15 **to do that, and then I will ask my**
16 **follow-up question. It was end of**
17 **Mr. Wisler's questioning of you.**

18 A. Okay.

19 (The reporter read from the
20 record as requested.)

21 BY MR. BROWN:

22 **Q. And after that,**
23 **Mr. Lockwood, Mr. Wisler asked you a**
24 **follow-up as to what type of claim it**

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1 would be.

2 And is it correct that the
3 ACC does not have a position on what type
4 of claim it would be if it's not a Class
5 6 claim?

6 A. Well, the ACC doesn't, as
7 such, have positions on hypothetical
8 questions. So, yes, the ACC doesn't have
9 a position on that issue. The ACC --
10 well, I will leave it at that.

11 **Q. On Friday, Mr. Cohn asked**
12 **you a question, who drafted the TDP.**
13 **That was the question, and you gave an**
14 **answer which I am happy to show you the**
15 **full answer. But I WANT to repeat a**
16 **portion of your answer. You said: "The**
17 **participants that did it were basically**
18 **counsel for the ACC, counsel for the FCR,**
19 **and members of the ACC itself in terms of**
20 **reviewing and commenting on things, and**
21 **the FCR himself."**

22 When you said the ACC
23 itself, what did you mean?

24 A. I meant --

PPS
Civ

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1 **Q. I am sorry. When you said**
2 **members of the ACC itself, what members**
3 **are you talking about?**

4 A. Well, I was referring to the
5 personal injury counsel who were the
6 delegated representatives of the
7 individual ACC members, if that's what
8 you are driving at.

9 **Q. That's what I am driving at.**
10 **And who specifically were**
11 **they?**

12 A. As far as I know -- well,
13 the way in which the process works, in
14 general, is sometimes the ACC has
15 in-person meetings, sometimes it has
16 telephonic meetings, sometimes documents
17 get sent to it by email as PDF
18 attachments or whatever, and the ACC has
19 asked do you want to have a meeting or is
20 this good enough for you. So there is a
21 variety of ways in which the ACC views an
22 input as obtained.

23 And my answer was simply
24 that at the conclusion of a process, the

PPS
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1 members of the ACC had weighed in in one
2 or more of the ways in which I had
3 described some of them had; they all had
4 the opportunity to express their views;
5 and, therefore, the final product was the
6 product of their input. And there was a
7 final vote to go forward with the
8 document.

9 **Q. Okay. And when you say the**
10 **members, you are talking about their**
11 **actual personal injury counsel?**

12 A. As far as I know. But,
13 again, I couldn't tell you whether an
14 individual personal injury lawyer might
15 have consulted with his client, the
16 member, on one or more aspects of the TDP
17 or, for that matter, even sent the client
18 a copy of the entire TDP and had a
19 discussion with him about it. I
20 certainly couldn't exclude that.

21 **Q. Can you tell me the list of**
22 **counsel that you are talking about, the**
23 **actual names?**

24 A. They would be -- as a

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1 general proposition, I believe they are
2 in the Disclosure Statement. If they
3 are, it's a hell of a lot better
4 description of them than my memory. I
5 just --

6 MR. FINCH: There is also an
7 order entered by the U.S. Trustee
8 that identifies the 11 individual
9 members of the ACC and their
10 counsel, care of their firms.

11 BY MR. BROWN:

12 **Q. That's what I am driving at.**
13 **I would like to know who the individuals**
14 **were at their firms that were involved.**

15 A. Well, let me just see. I am
16 somewhat surprised. The Disclosure
17 Statement does not appear to contain the
18 members of the ACC. It just lists the
19 counsel representing the committee as a
20 whole. I had misremembered. I had
21 thought that it did.

22 I can't really remember. I
23 mean, I know the four -- I identified
24 four earlier as being involved in the

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1 discussions with Grace. They are
2 included. I think there is at least nine
3 members of the ACC. I do not recall, as
4 I sit here, who the other five members of
5 the ACC are. I mean, they are of
6 record -- strike that. I do not recall
7 who the other five lawyers for the
8 members of the ACC are. They are of
9 record.

10 **Q. But the four to which you**
11 **are referring is Mr. Budd, Mr. Rice,**
12 **Mr. Cooney, and Mr. Weitz?**

13 A. Correct.

14 **Q. You were talking about the**
15 **Trust Distribution Procedures and who**
16 **drafted them.**

17 **Would your answer be the**
18 **same with respect to the Trust Agreement?**

19 A. On the Trust Agreement, I
20 think there was more input from Grace,
21 and, indeed, I think there may have been
22 some from counsel from Sealed Air, as I
23 think about it. And, indeed, now that I
24 think about it, I think there may have